

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION
CGCC-GCA-2022-03-EE

FINDING OF EMERGENCY
REGULATIONS FOR THE IMPLEMENTATION OF
COMMISSION FEES MODERNIZATION PROJECT III

The California Gambling Control Commission (Commission) finds it necessary to provide a readoption of regulations on an emergency basis to amend the annual fee structure paid by state gambling licensees (cardrooms) and third-party providers of propositions player services (TPPPS) in order to align them with the costs for providing regulatory oversight and related services pursuant to the fee study, which was approved by the Department of Finance (DOF) on September 16, 2021 and the adoption of Senate Bill (SB) 189 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2022). Submittal of the regulations via the regular rulemaking process would not have them in effect in time to collect fees for 2023, which would place regulatory collections below the amounts necessary to properly fund, the Commission and Bureau of Gambling Control (Bureau) within the Department of Justice (DOJ) and put unnecessary risk on the vital resources of the general fund which is necessary for a multitude of programs required for the preservation of the health, safety, and general welfare of Californians. The legality of the aforementioned annual fees were also part of the Commission fees questioned by the California State Auditor (Report 2018-132) and is presently subject to litigation. An emergency rulemaking action is necessary to avoid unnecessary harm to the public's general welfare. The proposed fee structure mirrors the proposed fee structure for TPPPS (OAL Notice File Number Z2021-1214-05).

SECTION 48 STATEMENT:

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

STATEMENT OF SPECIFIC FACTS DEMONSTRATING SUBSTANTIAL EVIDENCE THE AGENCY HAS MADE SUBSTANTIAL PROGRESS AND PROCEEDED WITH DILIGENCE TO COMPLY WITH 11346.1 (E).

The initial adoption of these emergency regulations was approved by the Office of Administrative Law and became effective on August 1, 2022. Since the effective date, the Commission has made revisions to the TPPPS fee structure. As previously stated, this proposed fee structure mirrors the proposed fee structure for TPPPS business licensees. During the adoption process for the TPPPS fee structure, additional changes were made to increase the clarity of the requirement. Additional changes to improve the clarity have been made as part of this emergency package, and so sections from the TPPPS fee structure have been included. Due to the timelines required, it is not possible to amend this file through the certificate of

compliance to make the processes consistent thus a readoption of the emergency file is necessary.

EMERGENCY FACTS:

Adoption of Senate Bill 189

Senate Bill 189, was signed into law on June 30, 2022. SB 189, in part, significantly modified Business and Professions Code (BPC) section 19951. BPC section 19951 is the section that provides the Commission the authority to charge an annual fee to cardrooms. Prior to the adoption of SB 189, the provision provided a specific fee structure that each cardroom was required to pay. This fee structure was based on the number of tables the cardroom was licensed to operate or the gross revenue of the cardroom, as specified. The Commission has adopted regulations in the form of Section 12368 to implement and collect based upon this fee structure.

With the adoption of SB 189, this fee structure has been repealed and replaced with authority for the Commission to adopt regulations to collect a fee that is limited to the reasonable regulatory expenditures of the Bureau and the Commission. As the Commission is aware that the existing fee structure existing in regulation is not limited to the reasonable regulatory expenditures of the Bureau and Commission, maintaining these regulations is inconsistent with the requirements of the BPC section 19951. Additionally, without the adoption of new fee regulations, both the Bureau and Commission are at risk of collecting insufficient fees to be fiscally solvent. Lastly, without the fiscal solvency, the Bureau and Commission would need another way to pay for their necessary expenses. This would likely require reliance on the general fund, which is not budgeted for such special fund expenditures. The budgetary pressures could in turn result in unanticipated cuts for programs related to the public's safety, health, and general welfare.

California State Auditor Report

As directed by the Joint Legislative Audit Committee, the California Bureau of State Audits (State Auditor) began conducting its audit of the Commission and the Bureau in 2018. The audit focused on each entity's regulatory duties that the Gambling Control Fund (GCF)¹ supports, which includes the licensing of individuals who own or work in cardrooms. The State Auditor's Report (Audit Report)² released on May 16, 2019, found that to varying degrees, the fees charged have resulted in unequal treatment of license applicants, which do not align with the costs for providing regulatory oversight and related services. This has resulted in an excessive surplus in the GCF.

To better align the revenue in the GCF with the costs of the activities that the fund supports, the Audit Report recommended the Commission and the Bureau conduct cost analyses of those activities by July 2020, which include at a minimum, the following:

- The entities' personnel costs, operating costs, and any program overhead costs.
- Updated time estimates for their core and support activities.
- The cost of their enforcement activities.

Further, the Audit Report recommended that in using such information, the Commission and the Bureau should reset their regulatory fees to reflect their actual costs.

¹ Gambling Control Fund (0567)

² State Audit Report 2018-132

Cost and Fee Study

Pursuant to the State Auditor's recommendation, in late 2019 the Commission and the Bureau contracted with MGT Consulting Group (MGT), a third-party consulting company, to complete a cost and fee study. The study's primary objective was to conduct a cost analysis to determine if the revenue collected and deposited into the GCF aligned with the costs of the activities that the fund supports. The study details the full cost of services provided by the Commission and the Bureau and presents full cost fee adjustments including their fiscal impact. MGT presented the fee study recently, which was submitted to the DOF and State Auditor. The DOF provided their approval of the fee study on September 16, 2021, and as such, precipitated these emergency regulations.

MGT used its standard approach for analyzing a majority of the costs of providing fee-related services, which is commonly referred to as a "bottom up" approach. With the exception of annual fees for cardroom and TPPPS businesses, all other regulatory fees were analyzed using the bottom-up approach. This bottom-up approach incorporated personnel costs, operating costs, and any program overhead costs, which allowed MGT to determine the individual per unit cost for these services. The study provides fee recommendations to align the revenue collected and deposited into the GCF with the costs of the activities provided by the Commission and the DOJ that the fund supports. The report is the culmination of an extensive analysis conducted by MGT in collaboration with both the Bureau and the Commission's management and staff.

Invoices are scheduled to be issued on October 1, 2022

As noticed in the original finding of emergency, the Bureau will provide each cardroom business licensee with an invoice on October 1, 2022. Due to the timelines required, it is not possible to amend this file through the certificate of compliance to make the processes consistent thus a readoption of the emergency file is necessary.

AUTHORITY AND REFERENCE:

Statutes of Authority

Business and Professions Code (BPC) section 19811. This provision provides the Commission jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments.

BPC section 19824. This provision provides the Commission shall have all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of the Gambling Control Act (Act).³

BPC section 19841. This provision provides the regulations adopted by the Commission shall prescribe the manner and method of collection and payment of fees and issuance of licenses.

BPC section 19876. This provision provides if an owner licensee submits an application for renewal of the gambling license after the deadline set in subdivision (b) but before the original

³ Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

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expiration date of the license, the Commission may assess reasonable delinquency fees not to exceed three times the usual application fee.

BPC section 19951. This provision provides every application for a license or approval shall be accompanied by a nonrefundable fee adopted by regulation and must not exceed \$1,200. The fee for initial issuance of a state gambling license will be an amount determined by the Commission in accordance with regulations adopted pursuant to the Act. The provision also provides regulatory authority for the Commission to adopt the annual fee for holding a state gambling license.

Reference Statutes

BPC section 19841. This provision provides the regulations adopted by the Commission shall prescribe the manner and method of collection and payment of fees and issuance of licenses.

BPC section 19876. This provision provides if an owner licensee submits an application for renewal of the gambling license after the deadline set in subdivision (b) but before the original expiration date of the license, the commission may assess reasonable delinquency fees not to exceed three times the usual application fee.

BPC section 19951. This provision provides every application for a license or approval shall be accompanied by a nonrefundable fee adopted by regulation and must not exceed \$1,200. The fee for initial issuance of a state gambling license will be an amount determined by the Commission in accordance with regulations adopted pursuant to the Act. The provision also provides regulatory authority for the Commission to adopt the annual fee for holding a state gambling license.

POLICY STATEMENT OVERVIEW:

The Commission is the state agency charged with the administration and implementation of the Act. In accordance with the Act, the Commission is authorized to adopt regulations governing the application for a license, permit, registration or approval,⁴ and adopt regulatory fees that are reasonably related to the costs of the regulation involved. This proposed emergency regulatory action provide an annual fee structure consistent with the one being adopted for TPPPS business licensees.

In summary, the regulations provide the cardroom annual fee. The numbers and percentages provided follow a step-by-step calculation method that begins with the Commission's and Bureau's operation costs, which are not directly related to any charged fee or deposit, as it relates to the cardroom industry. These costs are divided into cost pools dependent on the average annual revenue of the cardroom business licensee to determine the annual fee. This fee structure directly follows the findings of MGT.

Pursuant to the authority vested to the Commission, as indicated above, the Commission is proposing to adopt the amendments to Chapters 1, 2, 3, 5, and 7 of Division 18 of Title 4 of the California Code of Regulations, as described below. The Commission finds the adoption of regulations on an emergency basis is necessary to ensure that the Commission and Bureau are

⁴ Business and Professions Code section 19824, subdivision (a)

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able to collect annual fees for 2023, otherwise the Commission and Bureau would be unable to collect the amounts necessary to be properly funded.

INFORMATIVE DIGEST:

This proposed readoption will make changes within the California Code of Regulations, Title 4, Division 18 as follows:

All changes in the readoption text are shown as either single underline or ~~single strikeout~~ for the initial emergency changes or in double-underline or ~~double-strikeout~~ for the readoption changes.

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES

Amend 12002. General Definitions.

Section 12002 provides the definitions used in the Commission’s regulations. The Commission is adding one definition to this section. All provisions have been renumbered as necessary.

Subsection (ab) is added to provide the definition for “gross revenue.” The definition expands the definition provided in Business and Professions Code section 19805, subdivision (r) by adding “participating in” to the standard. By adding this term, the definition applies to TPPPS business licensees as they participate in controlled games but do not conduct controlled games. This change has no effect on determining a cardroom business licensee’s gross revenue as they do not participate in a controlled game. In addition, the change of the term “owner licensee” to “cardroom business licensee” is necessary, as the term “cardroom business licensee” is the term used in the Commission’s regulations and is defined, in part, to mean “owner licensee.”

CHAPTER 2. LICENSES AND WORK PERMITS

ARTICLE 2. INITIAL AND RENEWAL LICENSES AND WORK PERMITS

Amend 12112. Initial License Applications; Required Forms.

Section 12112 provides the forms and other information necessary for an application for an initial license to be considered complete. This section includes the attachment of many forms, including the Application for Owner Category License, CGCC-CH2-05. As part of submitting this form, applicants for cardroom business licensees and TPPPS business licenses are required to submit their annual fees. Sections 12368 and 12252 have been amended to provide a separate timeline for submitting annual fees. As such, requiring them as part of this application form is inconsistent and needs to be removed.

CHAPTER 3. CONDITIONS OF OPERATION FOR TPPPS BUSINESSES

ARTICLE 1. GENERAL PROVISIONS

Amend 12252. TPPPS Annual Fee.

Section 12252 provides the process and timelines for a TPPPS business licensee to submit their annual fee. This section is included in the previously mentioned TPPPS annual fee structure project (OAL file number 2022-0721-10C) and it is currently undergoing a 15-day public comment period. This Finding of Emergency includes both a description of the entire proposal,

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and a specific identification of the changes that would result when this emergency proposal is adopted following the conclusion of the TPPPS fee structure project. The following text has been added to the version of subsection (c) that is currently undergoing a 15-day public comment period in OAL file number 2022-0721-10C:

The Bureau will disapprove the request if the TPPPS business licensee has a history of failing to make installment payments as required or has not submitted the request pursuant subsection (b).

Subsection (a) provides that the TPPPS business licensee, by September 1 of each year, must submit to the Bureau their annual fee. The September 1 payment date is repealed because the annual fee will now be determined using the previous year's fiscal information. The Commission and Bureau will require time to analyze the concluding fiscal year's information, which is not available until July 1. The Bureau will need to report their information to the Commission, and as indicated the Commission and Bureau will need time to verify the accuracy of the data and the Commission will need time to complete the required analysis. This includes assessing operation and other costs and separating them into each cost pool, as explain below in Section 12252.2.

New subsection (a) provides that no later than October 1 of each year an invoice in an amount determined by the Commission pursuant to Section 12252.2 will be sent by the Bureau to each TPPPS business licensee. This is necessary to provide clear guidance to the Bureau and TPPPS business licensees on the timelines for invoicing and paying an annual fee. The existing requirement that payment be made by a specific date has been moved to subsection (c).

Subsection (b) provides that the TPPPS annual fee is equal to \$2,800 for each associated TPPPS endorsee licensee and TPPPS employee licensee. This provision is repealed as the new calculation to determine a TPPPS' annual fee is being replaced with a new identifiable metric provided in Section 12252.2

New subsection (b), renumbered from existing subsection (c), provides that the annual fee may be paid in installments if the TPPPS business licensee submits a written request to the Bureau within 30 calendar days from the date the invoice was mailed. The deadline ensures that the Bureau has adequate time to review the request and the TPPPS business licensee has enough time to submit its payment timely, either the first installment payment, or the full amount if the Bureau provides a notice of disapproval. The existing August 1 date is repealed as it does not work with the new timeline.

Subsection (c), which is separated from existing subsection (c), provides that a request for installment payments is to be considered approved unless within 14 calendar days of receipt of the request, the Bureau determines and notifies the TPPPS business licensee that it has been disapproved. If not disapproved, a TPPPS business licensee will provide its payments January 1, April 1, and June 30 of the payment year. If disapproved, or if not requested, the TPPPS business licensee will pay the entire amount by January 1. The standard for disapproval by the Commission is based on if the TPPPS business licensee has shown a history of failing to make installment payments as required or failed to submit the request within the required 30 calendar days. This provides the TPPPS business licensee with a clear understanding of when and how payment(s) are requested and allowed, and if paying through installments equally separates the

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payment through the remaining State fiscal year. The existing timeline has been repealed as it is inconsistent with the new billing timeline.

The addition of the sentence indicating that the Bureau will only disapprove a request for installment payments under one of two conditions; (1) The TPPPS has a history of failing to make installment payments as required, or (2) the request for installment payments was not made consistent with that requirement, provides clarity to TPPPS licensees under what conditions their request might not be approved.

Subsection (d) provides that should the TPPPS business licensee see a reduction in the number of associated TPPPS endorsee licensees and TPPPS employee category licensees after the TPPPS annual fee has been determined, no refund of the paid TPPPS annual fee will be provided. This provision is repealed. As explained further in Section 12252.2, the TPPPS annual fee will no longer be determined based on associated licenses and thus, this provision is unnecessary.

Subsection (e) provides that following the assessment of the TPPPS annual fee, if the TPPPS business licensee increases the number of its associated licenses above the number that was used to determine the TPPPS annual fee, the TPPPS business licensee must submit to the Bureau an additional per associated license fee within 30 days of the increase. Additionally, this provision provides that for new TPPPS business licensees, an initial year annual fee must be submitted upon the issuance of the new license. This subsection is repealed. As explained further in Section 12252.2, the TPPPS annual fee will no longer be determined based on associated licenses and thus this provision is unnecessary.

New subsection (d) provides that the TPPPS business license certificate will not be issued until the Bureau has received the TPPPS annual fee, or has approved the TPPPS business licensee for installment payments. This provision is necessary to ensure that a business is not indefinitely able to operate while unpaid annual fees remain.

Subsection (e), renumbered from subsection (f), provides that that any renewal application for a TPPPS business licensee will not be approved if the TPPPS business licensee has any outstanding annual fees. This provision is necessary to ensure that a business is not indefinitely able to operate while unpaid annual fees remain. The term “renewal application for the TPPPS business licensee” is amended to “application for a renewal TPPPS business license” because “renewal TPPPS business license” is a defined term and its use increases the clarity of the provision.

Subsection (f), renumbered from subsection (g), provides that no application for a contract may be approved by the Bureau for a TPPPS to operate until any delinquent annual fees have been paid in full. The term “TPPPS” is being added in front of “contract” as “TPPPS contract” is the appropriate term defined in Section 12002. This provision is necessary to ensure that a business is not indefinitely able to operate while unpaid annual fees remain.

New subsection (g) provides the invoice amounts for TPPPS business licensees when they first receive their licenses. Since the definition of an active license requires the submittal of fiscal information, it is likely that a newly approved TPPPS business licensee will not have operated for a sufficient time to have completed a full fiscal year in the timeframe required for the

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calculation of an annual fee. This subsection is necessary in order to include an operating TPPPS business licensee in the payment of the necessary operation fees of the Commission and Bureau during this interim period.

The removal of the word “gaming” in paragraphs (1) and (2) of subsection (g) brings the term used in line with the new proposed definition of “gross revenue” in Section 12002. This does not result in any change to the calculations or final fee amounts.

Amend 12252.2. TPPPS Annual Fee Amounts.

Section 12252.2 provides the annual fee amounts required of TPPPS business licensees. This section is included in the previously mentioned TPPPS annual fee structure project (OAL file number 2022-0721-10C) and it currently undergoing a for 15-day comment public comment. This Finding of Emergency will include both a description of the entire proposal, and a specific identification of the changes that would result when this emergency proposal is adopted following the conclusion of the TPPPS fee structure project. The following text has been added to the version that is currently undergoing a 15-day public comment period in OAL file number 2022-0721-10C:

- “Average” was added to 3-Year Average
- “Gaming” was removed from Gross Gaming Revenue
- “Over \$1.5M” was changed to “of \$1.5M or More”

The addition of the word “average” as part of the 3-year average gross revenue makes the labeling in Section 12252.2 consistent with the actual calculations that were conducted. This provides clarity on how the amounts are determined, and as shown, does not result in any change to the calculations or final fee amounts.

The removal of the word “gaming” in all three cases brings the term used in line with the new proposed definition in Section 12002. As shown, this does not result in any change to the calculations or final fee amounts.

The replacement of “over \$1.5M” with “of 1.5M or more” was necessary to ensure that any entity whose average gross revenue was exactly \$1,500,000 was included in one of the two categories.

The fees required include:

- \$0 for surrendered or revoked licensees;
- \$2,035 for non-operational licensees;
- \$4,069 for active licensees with a three-year average gross revenue under \$1,500,000; or,
- 1.54% of the three-year average gross revenue for active licensees with a three-year average gross revenue of \$1,500,000 or more.

The Commission used a step-by-step calculation method that begins with the Commission’s and Bureau’s operation costs, which are not directly related to any charged fee or deposit to determine these values, following the MGT Cost and Fee Study. The process was as follows:

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The Commission collected the cost data from the Commission and Bureau to determine which costs were not directly related to any charged fee or deposit. These costs were examined based on what type of function they were associated with and divided into one of six categories, or “cost pools”:

- Cost Pool 1. Non-application costs that are not directly attributed to an application fee or deposit. This includes all costs associated with administration, information technology, and legislative and regulatory workload.
- Cost Pool 2. Non-application costs that have a direct connection to the processing of applications for the controlled gambling industry, and are not directly attributed to an application fee or deposit. This includes such costs associated with responding to general phone calls, and the processing of electronic and regular mail.
- Cost Pool 3. Non-application costs generated by non-Commission actions. This includes costs associated with compliance and enforcement, financial audits, calls for service, and incident reports born separately amongst TPPPS business licensees and cardroom business licensees.
- Cost Pool 4. Non-application costs generated by matters requiring Commission action. This includes such costs associated with administrative hearings and decisions, and Commission meetings.
- Cost Pool 5. Non-application costs that are specific to cardroom business licensees but not directly linked to a Commission approval, such as compliance reviews of games, reviews of reports, and local ordinance reviews.
- Cost Pool 6. Non-application costs that are specific to TPPPS business licensees but not directly linked to a Commission approval, such as, contract renewal notices and non-investigation industry inquiries or correspondence.

The cost pools were then each divided into two sections, those costs associated with cardroom business licensees and those costs associated with TPPPS business licensees. For purposes of determining the annual fee amounts for TPPPS business licensees, those costs identified as associated with cardroom business licensees no longer factor into the calculation, and so are not discussed further.

The cost pools were separated as follows:

- Cost Pool 1. The Commission determined the percentage of active and non-operational TPPPS business licensees compared to the total of all active and non-operational TPPPS business licensees and cardroom business licensees. This percentage was applied to cost pool 1.
- Cost Pool 2. The Commission calculated the percentage of total applications for TPPPS business licensees compared to the total of all applications for TPPPS business licensees and cardroom business licensees. This percentage was applied to cost pool 2.
- Cost Pool 3. The Commission determined the percentage of active and non-operational TPPPS business licensees compared to the total of all active and non-operational TPPPS business licensees and cardroom business licensees. This percentage was applied to cost pool 3.

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Cost Pool 4. The Commission will determine the percentage of total Commission actions for TPPPS business licensees and cardroom business licensees using the average number of applicable Commission actions over the previous three fiscal years. This percentage was applied to cost pool 4.

Cost Pool 5. The entirety of this cost pool is associated with cardroom business licensees.

Cost Pool 6. The entirety of this cost pool is associated with TPPPS business licensees.

The Commission then totaled the results of the separated costs pool amounts for cost pools 1 through 4 and added the amount of cost pool 5. The result of this is the total annual fee to be paid by all TPPPS business licensees who are either active licensees or non-operational licensees. To determine the amounts owed by each individual TPPPS, the Commission did the following:

- The Commission set the annual fee amount of surrendered or revoked licensees at \$0 as these persons are no longer licensees with the Commission.
- To determine the amount owned by each active licensee whose three-year average gross revenue is under \$1,500,000, the Commission divided the total annual fee by the three-year average number of Commission actions.
- To determine the amount owed by each non-operational licensees, the Commission took the amount owned by each active licensee whose three-year average gross revenue is under \$1,500,000 and divided it by half.
- To determine the percentage of three-year average gross revenue of \$1,500,000 or more, the Commission determined the remaining annual fee owed by subtracting the amounts determined for active licensee whose three-year average gross revenue is under \$1,500,000 and non-operational licensees from the total amount owed by all TPPPS business licensees.

The remainder amount is divided by the total average gross revenue of all TPPPS licensees with \$1,500,000 or more in revenue. The resulting percentage is what is provided in the regulation, and will be applied to each TPPPS licensee's three-year average gross revenue to issue the invoice.

This distribution, as provided in the MGT Cost and Fee Study, provides that larger TPPPS business licensees, who generally require more non-application administrative costs since they operate at more tables and have more employees/licensees, pays a larger portion of the required total fee amount as their annual fee. By splitting up the remainder of the total fee amongst these licensees and utilizing their three-year average gross revenue, each TPPPS business licensee is required to pay a proportional percentage of the total fee while still ensuring that the Commission and Bureau receive all fees necessary to cover the costs of these necessary services.

CHAPTER 5. ACCOUNTING AND TRANSACTION APPROVALS

ARTICLE 1. ACCOUNTING AND FINANCIAL REPORTING

Adopt 12318. Cardroom Business License Gaming Revenue Report.

Currently subsection (c) of Section 12368 requires the submittal of a completed Cardroom Business License: Annual Fee Calculation, CGCC-CH7-03 alongside the submittal of the current year's annual fee (which itself is due no later than 120 calendar days following the end of the cardroom business licensee's preceding fiscal year). This form includes information both to

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report the revenue for gambling activities, broken down by individual games and tournaments, and information for the determination of the cardroom business licensee's annual fee. With the change to the annual fee payment structure, the section related to the annual fee schedule is inconsistent, no longer necessary, and is therefore repealed. The remainder of the form and the current submittal timeline is maintained, and moved to this new section. Due to the move to Chapter 5 and the removal of part of the form, it has been renamed to Cardroom Business License: Gaming Revenue Report, CGCC-CH5-01.

CHAPTER 7. CONDITIONS OF OPERATION FOR GAMBLING ESTABLISHMENTS
ARTICLE 1. GENERAL PROVISIONS

Amend 12360. Definitions.

Section 12360 provides the definitions that pertain only to Chapter 7. The Commission is proposing to add six new definitions to this section. All existing definitions are renumbered accordingly, which is a non-substantive change.

Paragraph (b)(1) provides the definition of "Active Licensee" to mean a cardroom business licensee who has generated revenue for at least the last year as reported in Section 12313. This means that if a cardroom business licensee has reported revenue in the previous year's financial statement, they are considered active. This definition is necessary to allow other provisions to easily reference this category of licensee. This provision has been amended to remove "TPPPS business licensee" because under Section 12368.1 there was a need for active licenses to refer to both license types due to the calculations related to active licensees. However, with the repeal of Section 12368.1, the only remaining use of active licensees is due to billing, which only refers to cardroom business licensees.

Paragraph (b)(2) provides the definition of "Annual Fee" to mean the amount a cardroom business licensee is required to pay to cover Non-Application Costs pursuant to Section 12368.2. This definition is necessary to allow other provisions to easily reference this concept.

Paragraph (b)(3) provides the definition of "Application Cost" to mean all costs, including the deposit, related to the processing of an application. This definition is necessary as it allows for the easy reference to a series of fees and deposits that may be required.

Former paragraphs (b)(7) through (12) and (16) were repealed because under Section 12368.1 there was a need for the definitions of cost pools and new business licensee. However, with the repeal of Section 12368.1, there is no remaining use of these terms and therefore no need for these terms to be defined.

Paragraph (b)(10) provides the definition of "Non-Application Cost" to mean all costs other than application costs borne by the Commission, Department of Justice, and all other State operations expenditures for the administration and enforcement of the Act. This definition is necessary as it allows for the easy reference of a multi-step mathematical calculation.

Paragraph (b)(11) provides the definition of "Non-Operational Licensee" to mean a cardroom business licensee that maintains a valid license but did not generate revenue in the past year as reported in Section 12313. This means that if a cardroom business licensee has not reported

revenue in the previous year's financial statement they are considered non-operational. This definition is necessary to allow other provisions to easily reference this category of licensee. This provision has been amended to remove "TPPPS business licensee" and "TPPPS business license" because under Section 12368.1 there was a need for active licenses to refer to both license types due to the calculations related to non-operational licenses. However, with the repeal of Section 12368.1, the only remaining use of non-operational licenses is due to billing, which only refers to cardroom business licensees.

Paragraph (b)(13) provides the definition of "Surrendered or Revoked Licensee" to mean a former cardroom business licensee who stopped operating and ceased to maintain a valid license prior to August 31 of the year the invoices are created. This definition is necessary to allow other provisions to easily reference this category of licensee.

Amend 12368. Cardroom Business License Annual Fee.

Section 12368 provides the process and timelines for a cardroom business licensee to submit their annual fee. The current provision mirrors the previous process and fee schedule provided in BPC 19951, which has since been repealed. As such, all of the existing Section 12368 is proposed be repealed and replaced as follows:

Subsection (a) provides that no later than October 1 of each year an invoice in an amount determined by the Commission pursuant to Section 12368.2 will be sent by the Bureau to each cardroom business licensee. This is necessary to provide clear guidance to the Bureau and cardroom business licensees on the timelines for invoicing and paying an annual fee. The existing requirement that payment be made by a specific date has been moved to subsection (c).

Subsection (b) provides that the annual fee may be paid in installments if the cardroom business licensee submits a written request to the Bureau within 30 calendar days from the date the invoice was mailed. The deadline ensures that the Bureau has adequate time to review the request and the cardroom business licensee has enough time to submit its payment timely, either the first installment payment, or the full amount if the Bureau provides a notice of disapproval.

Subsection (c) provides that a request for installment payments is to be considered approved unless, within 14 calendar days of receiving the request, the Bureau determines and notifies the cardroom business licensee that it has been disapproved. If not disapproved, a cardroom business licensee will provide its payments January 1, April 1, and June 30 of the payment year. If disapproved, or if not requested, the cardroom business licensee will pay the entire amount by January 1. The standard for disapproval by the Commission is based on if the cardroom business licensee has shown a history of failing to make installment payments as required or failed to submit the request within the required 30 calendar days. This provides the cardroom business licensee with a clear understanding of when and how payment(s) are requested and allowed, and if paying through installments equally separates the payment through the remaining State fiscal year. The existing timeline has been repealed as it is inconsistent with the new billing timeline.

Subsection (d) provides that the cardroom business license certificate will not be issued until the Bureau has received the cardroom annual fees, or has approved the cardroom business licensee for installment payments. This provision is necessary to ensure that a business is not indefinitely able to operate while unpaid annual fees remain.

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Subsection (e) provides that that any renewal application for a cardroom business licensee will not be approved if the cardroom business licensee has any outstanding annual fees. This provision is necessary to ensure that a business is not indefinitely able to operate while unpaid annual fees remain.

Subsection (f) provides that no application for a contract may be approved by the Bureau for a TPPPS to operate at this cardroom until any delinquent annual fees have been paid in full. This provision is necessary to ensure that a business is not indefinitely able to operate while unpaid annual fees remain.

Subsection (g) provides the invoice amounts for cardroom business licensees when they first receive their licenses. Since the definition of an active licensee requires the submittal of fiscal information, it is likely that a newly approved cardroom business licensee will not have operated for a sufficient time to have completed a full fiscal year in the timeframe required for the calculation of an annual fee. This subsection is necessary in order to include an operating cardroom business licensee in the payment of the necessary operation fees of the Commission and Bureau during this interim period.

Paragraph (1) provides that upon the first issuance of a cardroom business license, either as a temporary or an initial license, the Bureau will issue an invoice in the amount required of an active licensee with a gross revenue under \$1,500,000, as provided in Section 12368.2, divided by 12, multiplied by the number of whole months remaining in the current calendar year, the cardroom business licensee must submit to the Bureau the annual fee within 30 calendar days from the date the invoice was mailed.

Paragraph (2) provides that for the first full calendar year of licensure, a cardroom business licensee will be invoiced the unadjusted annual fee required of an active licensee with a gross revenue under \$1,500,000, as provided in Section 12368.2 for the following calendar year. As previously mentioned, while a newly issued cardroom business licensee may be active, the definition of active licensee might exclude the cardroom business licensee from having to pay annual fees due to there not being time for a full fiscal year, and this requirement ensures that they still share in the payment of all necessary costs required by the Commission and Bureau. For the invoice period, if the cardroom business licensee has had their license issued prior to October 1, their invoice will be issued alongside all other cardroom business licensee invoices, on October 1. If the cardroom business licensee has had their license issued after October 1, their invoice will be issued alongside their partial year invoice required in paragraph (1) of this subsection. This is necessary to provide clarity on how a cardroom business licensee will have their invoice issued for this interim time period.

Repeal 12368.1. Cardroom Business License Annual Fee Calculation

Section 12368.1 was repealed because it was necessary to provide the regulatory public with a specific and identifiable number or metric as to how the annual fee will be calculated. The new annual fee can be found in Section 12368.2 and the calculation methodology for the annual fee can be found in the finding of emergency under section 12368.2.

Adopt 12368.2. Cardroom Business License Annual Fee Amounts.

Section 12368.2 provides the annual fee amounts required of cardroom business licensees. The fees required include:

- \$0 for surrendered or revoked licensees;
- \$5,237 for non-operational licensees;
- \$10,473 for active licensees with a three-year average gross revenue under \$1,500,000; or,
- 1.29% of the three-year average gross revenue for active licensees with a three-year average gross revenue of \$1,500,000 or more.

The Commission used a step-by-step calculation method that begins with the Commission's and Bureau's operation costs, which are not directly related to any charged fee or deposit to determine these values, following the MGT Cost and Fee Study. The process was as follows:

The Commission collected the cost data from the Commission and Bureau to determine which costs were not directly related to any charged fee or deposit. These costs were examined based on what type of function they were associated with and divided into one of six categories, or "cost pools":

- Cost Pool 1. Non-application costs that are not directly attributed to an application fee or deposit. This includes all costs associated with administration, information technology, and legislative and regulatory workload.
- Cost Pool 2. Non-application costs that have a direct connection to the processing of applications for the controlled gambling industry, and are not directly attributed to an application fee or deposit. This includes such costs associated with responding to general phone calls, and the processing of electronic and regular mail.
- Cost Pool 3. Non-application costs generated by non-Commission actions. This includes costs associated with compliance and enforcement, financial audits, calls for service, and incident reports born separately amongst TPPPS business licensees and cardroom business licensees.
- Cost Pool 4. Non-application costs generated by matters requiring Commission action. This includes such costs associated with administrative hearings and decisions, and Commission meetings.
- Cost Pool 5. Non-application costs that are specific to cardroom business licensees but not directly linked to a Commission approval, such as compliance reviews of games, reviews of reports, and local ordinance reviews.
- Cost Pool 6. Non-application costs that are specific to TPPPS business licensees but not directly linked to a Commission approval, such as, contract renewal notices and non-investigation industry inquiries or correspondence.

The cost pools were then each divided into two sections, those costs associated with TPPPS business licensees and those costs associated with cardroom business licensees. For purposes of determining the annual fee amounts for cardroom business licensees, those costs identified as associated with TPPPS business licensees no longer factor into the calculation, and so are not discussed further.

The cost pools were separated as follows:

- Cost Pool 1. The Commission determined the percentage of active and non-operational cardroom business licensees compared to the total of all active and non-operational TPPPS business licensees and cardroom business licensees. This percentage was applied to cost pool 1.
- Cost Pool 2. The Commission calculated the percentage of total applications for cardroom business licensees compared to the total of all applications for TPPPS business licensees and cardroom business licensees. This percentage was applied to cost pool 2.
- Cost Pool 3. The Commission determined the percentage of active and non-operational cardroom business licensees compared to the total of all active and non-operational TPPPS business licensees and cardroom business licensees. This percentage was applied to cost pool 3.
- Cost Pool 4. The Commission will determine the percentage of total Commission actions for TPPPS business licensees and cardroom business licensees using the average number of applicable Commission actions over the previous three fiscal years. This percentage was applied to cost pool 4.
- Cost Pool 5. The entirety of this cost pool is associated with cardroom business licensees.
- Cost Pool 6. The entirety of this cost pool is associated with TPPPS business licensees.

The Commission then totaled the results of the separated costs pool amounts for cost pools 1 through 4 and added the amount of cost pool 5. The result of this is the total annual fee to be paid by all cardroom business licensees who are either active licensees or non-operational licensees. To determine the amounts owed by each individual cardroom, the Commission did the following:

- The Commission set the annual fee amount of surrendered or revoked licensees at \$0 as these persons are no longer licensees with the Commission.
- To determine the amount owned by each active licensee whose three-year average gross revenue is under \$1,500,000, the Commission divided the total annual fee by the three-year average number of Commission actions.
- To determine the amount owed by each non-operational licensees, the Commission took the amount owned by each active licensee whose three-year average gross revenue is under \$1,500,000 and divided it by half.
- To determine the percentage of three-year average gross revenue of \$1,500,000 or more, the Commission determined the remaining annual fee owed by subtracting the amounts determined for active licensee whose three-year average gross revenue is under \$1,500,000 and non-operational licensees from the total amount owed by all cardroom business licensees.

The remainder amount is divided by the total average gross revenue of all cardroom licensees with \$1,500,000 or more in revenue. The resulting percentage is what is provided in the regulation, and will be applied to each cardroom licensee's three-year average gross revenue to issue the invoice.

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This distribution, as provided in the MGT Cost and Fee Study, provides that larger cardroom business licensees, who generally require more non-application administrative costs since they operate more tables and have more employees/licensees, pays a larger portion of the required total fee amount as their annual fee. By splitting up the remainder of the total fee amongst these licensees and utilizing their three-year average gross revenue, each cardroom business licensee is required to pay a proportional percentage of the total fee while still ensuring that the Commission and Bureau receive all fees necessary to cover the costs of these necessary services.

ARTICLE 10. GAMING TABLES

Amend 12470. Request for Additional Temporary Tables for Tournaments or Special Events.

Section 12470 provides the process by which a cardroom business licensee can request additional tables for use on a temporary basis. Currently, this process includes two fees, a fixed application fee to cover the costs of processing the application and an adjustment to the cardroom business licensee's annual fee to reflect the additional tables. Now that the annual fee payment is no longer linked to the number of tables operated by the cardroom business licensee, this additional fee is inconsistent, unnecessary, and is therefore repealed.

Paragraph (3) of subsection (a) provides that the fee is required to be submitted with the application. Additionally, the form Cardroom Business License: Gaming Tables, CGCC-CH7-07, attached to the Appendix in this section, provides the same requirement. It is repealed from both the section and the form.

Subsection (f) provides the calculation for this fee. As this fee is no longer being collected, its calculation is unnecessary and therefore repealed.

Amend 12472. Request for Additional Permanent Tables.

Section 12472 provides the process by which a cardroom business licensee can request permanent additional tables. Currently, this process includes an adjustment of the cardroom business licensee's annual fees; however, as those fees are no longer being based on the total number of tables operated by the cardroom business license, this additional fee is being repealed.

Subsection (d) provides the timeline for the Bureau and Commission to review and consider the application for additional permanent tables. This includes a notification and submittal of additional annual fees. As previously stated, the calculation of annual fees is no longer being determined based on the number of tables being operated and so the increase is inconsistent and therefore is repealed.

FISCAL IMPACT ESTIMATES:

MANDATE IMPOSED ON LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:
None.

COST TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:
None.

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FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE: **Insignificant.**

DOCUMENTS RELIED UPON:

California Department of Finance – Fund Condition Statements: Gambling Control Fund (0567), Fiscal Years 2021-22 and 2022-23

MGT Cost and Fee Study – Approved by the Department of Finance on September 16, 2021

California Bureau of State Audits – Audit Report 2018-132 – May 16, 2019

INCORPORATION BY REFERENCE FOR READOPTION

Pursuant to 1 California Code of Regulations 50 (c) and 1 California Code of Regulations 52(c) the Commission requests approval for re adoption of an emergency regulation and incorporates by reference the rulemaking record, OAL file number 2022-0721-07E.